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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/580,191
Filing Date: February 26, 2007
Appellant(s): ENGSTROM, NILS-ERIK

Thomas P. Pavelko
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 06, 2011 appealing from the Office action mailed October 06, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
1-7, 12 and 13.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2003/0024199 Pervan et al. 2-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 2-4, 6, 7, 12, and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear clear and complete as to a second upper side groove along the second edge as recited within line 2 of claim 2.

Claims 2-4, 6, 7, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 appears vague and indefinite in that it is not clear as to what is being defined by “and the second edge comprises a second upper side groove”. The specification does not appear to set forth more than one side groove along the second edge. Line 3 of claim 2 presents “a first, and a second, snapping tongues”. Are there a plurality of first snapping tongues and a plurality of second snapping tongues? Further, lines 4-5 recite “the joining profile being so configured so as to allow each of the first and second snapping tongues to be fitted into the first and second upper side grooves of the two, joined, adjacent panels.” It is not clear as to how the first snapping tongue is fitted into both the first and second upper grooves nor how the second snapping tongue

is fitted into both the first and second upper grooves. The specification does not appear to set forth such an arrangement. Further, are any of the first and second snapping tongues the same as “the at least one tongue” introduced within line 4 of claim 1? What otherwise, would be the relationship between “the at least one tongue” introduced within line 4 of claim 1 and “a first, and a second, snapping tongues” presented within line 3 of claim 2?

Claim 3 presents “mating surfaces”. However, it is not clear as to what the relationship is between the “mating surfaces” presented in claim 3 and “a first edge and a second edge” introduced within claim 1. Claim 3 otherwise, appears to be referring to the same structure by differing terminology which renders the language of claim 3 vague and indefinite.

Claim 7 appears vague and indefinite in that it is not clear as to what is being defined by “wherein a portion of a panel arranged between the upper side groove and the panel's respective distal edge portion comprises a recess.” What for example, is being defined by “a panel”? Is this the same as either of the panels introduced within claim 1? If so, it is not clear as to how such a panel is arranged “between the upper side groove and the panel's respective distal edge portion” nor how such a panel “comprises a recess”. Line 2, to which upper side groove does “the upper side groove” refer? Line 2, “the panel's respective distal edge portion” lacks antecedent basis within the claim. It is therefore, not clear as to what “the panel's respective distal edge portion” refers.

Claim 12, line 1, to which upper side groove does “the upper side groove” refer? Line 3, the recitation of “the distance being so configured that the snapping tongue may

be pressed in between the first and second groove edge surfaces” is vague, indefinite, and confusing as not being clear. How can a distance be “configured”? Line 4, to which snapping tongue does “the snapping tongue” refer?

Claim 13, line 2, to which snapping tongue does “the snapping tongue” refer?

Lines 1-2, the recitation of “the first and second groove edge surfaces are arranged so that an undercut is present” is vague, indefinite, and confusing as not being clear.

Since no undercut is labeled in the drawings, the examiner does not understand what structure represents the undercut. Lines 2-4, the recitation of “that the snapping tongue of the joining profile is configured with respect to the undercut so that a snap action locking effect is achieved” is vague, indefinite, and confusing as not being clear. How is the snapping tongue of the joining profile configured with respect to the undercut? How is a snap action locking effect achieved (i.e., what structure allows for this)?

Claim Rejections - 35 USC § 102

Claims 1-7, 12, and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent Publication No. 2003/0024199 to Pervan et al.

As to claim 1, Pervan et al. discloses, Figs. 8c, 10b, 15c and 17c, a joint between two panels, the joint comprising

a first edge (right edge of tile 1 in Figs. 8c, 10b, 15c and 17c) and

a second edge (left edge of tile 1' in Figs. 8c, 10b, 15c and 17c)

whereby the first edge comprises a groove (9) and the second edge is provided with a tongue (10)

wherein the second edge further comprises an upper side groove (within which 55 sits), and

a joining profile (55) the joining profile comprises an elastic material and is provided with a tongue (can be seen as extension in 55 particularly, in Figs. 8c, 10b, 15c and 17c) and an intermediate section (any middle of 55) however, where lead line of 54 touches for example, in Figs. 10b and 17c or where lead line of 55 touches in Fig. 15c or 15d), the joining profile (55) being so configured so as to allow it to be located in the upper portion of the joint between two, joined, adjacent panels (1, 1').

As to claim 2 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), Pervan et al. discloses the joint of claim 1 as discussed above, and Pervan et al. also discloses that the first edge further comprises an upper side groove (where lead line of 56 touches in 15c for example) and the second edge comprises a second upper side groove (adjacent where lead line of 41 touches in Fig. 15c) and the joining profile (55) comprises a first, and second, snapping tongues (either end of 55 or where lead line 54 touches and where lead line 41 touches respectively, in Fig. 15d), the joining profile (55) being so configured so as to allow each of the first and second snapping tongue to be fitted into the first and second upper side grooves (where lead line of 56 touches and adjacent where lead line of 41 touches respectively, in Fig. 15c) of the two, joined, adjacent panels (10, 10).

As to claims 3 and 4 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), Pervan et al. discloses the joint of claim 2 as discussed above, and Pervan et al. also discloses that the joint further

comprises mating surfaces (surfaces of first and second edges), wherein the joining profile (55) and the upper side grooves (where lead line of 56 touches and adjacent where lead line of 41 touches respectively, in Fig. 15c) are so configured that a play in the range of 0.05-1mm is created in the joint between the mating surfaces, (paragraph [0191].

As to claim 5, Pervan et al. discloses the joint of claim 1 as discussed above, and Pervan et al. also discloses that the tongue (10) and the groove (9) are configured to limit the movement in a vertical direction between two adjacent panels (1, 1').

As to claim 6 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), Pervan et al. discloses the joint of claim 2 as discussed above, and Pervan et al. also discloses that the joining profile (55) and the upper side grooves (where lead line of 56 touches and adjacent where lead line of 41 touches respectively, in Fig. 15c) are configured to limit the movement in horizontal direction between two adjacent panels (1, 1').

As to claim 7 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), Pervan et al. discloses the joint of claim 2 as discussed above, and Pervan et al. also discloses that a portion arranged between the upper side groove (either of where lead line of 56 touches and adjacent where lead line of 41 touches respectively, in Fig. 15c) and its respective distal edge portion comprises a recess (15).

As to claim 12 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), Pervan et al. discloses the joint of claim 2

as discussed above, and Pervan et al. also discloses that the upper side groove (either of where lead line of 56 touches and adjacent where lead line of 41 touches respectively, in Fig. 15c) is provided with a first groove edge surface (slanting surface of 1') and a second groove edge surface (vertical surface of 1'), and between the first and second groove edge surfaces a predetermined distance is present, the distance being so configured that the snapping tongue (where lead line 41 touches in Fig. 15d) may be pressed in between the first and second groove edge surface.

As to claim 13 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), Pervan et al. discloses the joint of claim 12 as discussed above, and Pervan et al. also discloses that the first and second groove edge surfaces are arranged so that an undercut is present, (as can be seen from the slanting and vertical surfaces of 1') that the snapping tongue (where lead line 41 touches in Fig. 15d) of the joining profile (55) is configured with respect to the undercut so that a snap action locking effect is achieved.

(10) Response to Argument

- 1) With regard to Appellant's argument against the rejection of claims 2-4, 6, 7, 12 and 13 under 35 U.S.C. 112, first paragraph, The instant disclosure does not appear to present a second upper side groove along the second edge. Appellant now appears to be stating that the "upper side groove" and the "second upper side groove" as introduced within claim 2 are directed to the upper side grooves 12 respectively along one edge of the Fig. 1a panel and along an opposite edge of the Fig. 1a panel.

However, claim 1, from which claim 2 depends, already introduces “an upper side groove” along the second edge, (see line 3 of claim 1). Thus, claim 2 is effectively introducing a second upper side groove along the second edge. A reading of claim 2 would have the joint possessing “an upper side groove” along the “second edge” as well as “an upper side groove” along the “first edge” as well as “a second upper side groove” along the “second edge”. The instant disclosure to elected Fig. 1a does not set forth “a second upper side groove” along the “second edge”. To say the least, claim 2 sets forth three separate upper side grooves with instant disclosure to elected Fig. 1a setting forth only two upper side grooves.

2) With regard to Appellant’s argument against the rejection of claims 2-4, 6, 7, 12 and 13 under 35 U.S.C. 112, first paragraph:

Re claim 2; As to “and the second edge comprises a second upper side groove”, reference is made to the examiner’s remarks above with respect to the rejection under 35 U.S.C. 112, first paragraph.

As to “a first, and a second, snapping tongues”, line 3 of claim 2 appears to be setting forth a first snapping tongues and a second snapping tongues with the recitation “a first, and a second, snapping tongues”. Otherwise, Appellant might mean for the language of claim 2 to read --a first and a second snapping tongue-- or --first and second snapping tongues--. The examiner is not sure if claim 2 is defining multiple tongues along either side of the “joining profile” or one tongue along each side of the joining profile.

As to “the joining profile being so configured so as to allow each of the first and second snapping tongues to be fitted into the first and second upper side grooves of the two, joined, adjacent panels”, claim 2 from this particular recitation appears to be setting forth that the first snapping tongue is to be fitted into both the first groove and the second groove and that the second snapping tongue is to be fitted into both the first groove and the second groove which arrangement is not set forth within the instant disclosure.

As for the examiner’s final query with respect to the language of claim 2, the language of claim 2 introduces “a first, and a second, snapping tongues” by reciting “the joining profile comprises a first, and a second, snapping tongues”. However, claim 1, as at line 3-4, already introduces “at least one tongue” by reciting “the joining profile...is provided with at least one tongue”. Thus, it is not clear as to what “a first, and a second, snapping tongues” necessarily refer. As asked within the final rejection, what otherwise, would be the relationship between “the at least one tongue” introduced within line 4 of claim 1 and “a first, and a second, snapping tongues” presented within line 3 of claim 2?

Re claim 3:

Upon reviewing Appellant’s remarks with respect to the language of claim 3 it would seem that Appellant perhaps meant for claim 3 to recite that the first and second edges comprise mating surfaces. However, claim 3 sets forth that “the joint” which is the joint that is being claimed, (i.e., the whole invention), comprises mating surfaces. Even when reviewing the instant disclosure it would not be clear as to whether claim 3 is setting forth a different name for the “first edge” and the “second edge” or if claim 3 is

setting forth “mating surfaces” entirely separate from either of the first edge and the second edge. In other words, if claim 1 already introduces “a first edge and a second edge” when defining what the claimed “joint” comprises then any and all parts of those edges are already introduced as far as what the claimed “joint” comprises and, any further breakdown of either of the “first edge” and the “second edge” should be recited with respect to “first edge” and the “second edge” respectively. Otherwise, it is not clear as to how the claimed joint possesses “a first edge” and a second edge” as well as “mating surfaces” on top of the already introduced “first edge” and “second edge”.

Re claim 7;

Initially, it appears that Appellant is referencing a non-elected embodiment of the invention in referring to Fig. 3a of the instant disclosure. In the response of June 12, 2008 Applicant had elected to prosecute claims directed to the embodiment of Fig. 1a listing among other claims, claim 7 as reading upon the elected embodiment of Fig. 1a. In any event, Appellant contends that claim 7 “is not defining the ‘whole’ panel but here ‘a portion of the panel’. First of all, claim 7 does not recite --a portion of the panel-- rather, claim 7 recites “a portion of a panel” which precipitates confusion as to just what “a panel” refers. Thus, one reading the language of claim 7 would not understand either of a) how “a panel” is arranged between the upper side groove and a respective distal edge portion of one of the already introduced panels of claim 1, and b) how such a panel “comprises a recess”.

As for “the upper side groove”, it is not clear as to which of the two, (three?), upper side grooves introduced within claim 2 is being referenced with the claim 7

recitation of “the upper side groove”. Claim 1 at line 3 introduces “an upper side groove” while line 2 of claim 2 introduces “an upper side groove” and another “upper side groove” recited as “a second upper side groove”. Thus, three “upper side groove[s]” appear to have been introduced.

As well, the claim language fails to set forth, (clearly introduce), “the panel’s respective distal edge portion”. No distal edge portion has ever been set forth within the claim language.

Re claim 12;

As for “the upper side groove”, it is not clear as to which of the two, (three?), upper side grooves introduced within claim 2 is being referenced with the claim 12 recitation of “the upper side groove”. Claim 1 at line 3 introduces “an upper side groove” while line 2 of claim 2 introduces “an upper side groove” and another “upper side groove” recited as “a second upper side groove”. Thus, three “upper side groove[s]” appear to have been introduced.

As for “the distance being so configured”, Appellant’s explanation does not serve to overcome the rejection of claim 12 based upon this language. A distance is of course, between two points or elements as Appellant remarks. Such explanation of a distance does not remedy the indefiniteness of the language in question. How is any distance “configured? A distance is a space or a spacing. An upper surface can be “configured” but it is not seen how a spacing or “distance” can be configured.

As for “snapping tongue”, it is not clear as to which of the two, (four or more?), snapping tongues introduced within line 4 of claim 2 is being referenced with the claim

12 recitation of “the snapping tongue”. Claim 2 at line 4 introduces “a first, and a second, snapping tongues” Thus, at least two, (if not four or more), “snapping tongue[s]” appear to have been introduced.

Re claim 13;

As for “snapping tongue”, it is not clear as to which of the two, (four or more?), snapping tongues introduced within line 4 of claim 2 is being referenced with the claim 13 recitation of “the snapping tongue”. Claim 2 at line 4 introduces “a first, and a second, snapping tongues” Thus, at least two, (if not four or more), “snapping tongue[s]” appear to have been introduced.

As for of “the first and second groove edge surfaces are arranged so that an undercut is present”, Appellant contends “thus ‘he upper side groove’ is the groove provided in the panel having a first groove edge and a second groove edge surface in which an undercut is present.” But, this is not recited within the claim thus, the language in question appears vague and confusing. The instant disclosure does not specifically define just what “an undercut” is with respect to the elected embodiment of Fig. 1a.

3) With regard to Appellant’s argument against the rejection of claims 1-7, 12 and 13 under 35 U.S.C. 102(a):

Appellant argues;

While the Examiner refers to Figs. 8c, 10b, 15c and 17c as disclosing a joint between two panels, there is no joining profile in Pervan. While the Examiner refers to 55 as a “joining profile”, Pervan clearly discloses 55 as a sealant not a joining profile. Moreover Pervan does not disclose in any of Figs. 8c, 10b, 15c,

17c. or elsewhere, a second edge further comprising an upper side groove or even a first edge comprising an upper side groove. In each of Figs. 8c, 10, 15c and 17c, the panels have no upper grooves of any type (see Figs. 8e, 10, 15e and 17e, respectively), and in each case sealant 55 is below the upper sides of the panel and is internal of the panel upper sides.

However,

1) element 55 is indeed a “joining profile”. Element 55 of Pervan et al. does possess a profile and is used within, (lies within), a joint.

2) the respective upper side grooves, as is set forth in the rejection of claim 1 over Pervan et al., are where lead line of 56 touches in 15c for example, (for first upper side groove), and adjacent where lead line of 41 touches in Fig. 15c, (for second upper side groove).

As for Appellant’s argument that,

“the panels have no upper grooves of any type...and in each case sealant 55 is below the upper sides of the panel and is internal of the panel upper sides”,

the language of claims 1-7, 12 and 13 do not call for the “joining profile” to be at an upper surface of any panel, (if that is what Appellant means by “upper sides”). Otherwise, Pervan et al. if divided into an upper side and a lower side would find the grooves alluded to by the examiner within the upper side of the panel. Further, the language of claims 1-7, 12 and 13 do not call for “upper grooves” but instead recite “upper side grooves”. What is alluded to by the examiner as the upper side grooves

certainly falls within the upper portion of the side of the respective panel thus, “upper side groove”.

In any event claim 1 only calls for the second edge as comprising an upper side groove. Clearly the area where element 55 is positioned in Fig. 8c constitutes an “upper side groove” within which element 55 is set.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael Safavi/

Michael Safavi
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